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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

USCBP-2018-0001

Notice of Domestic Interested Party Petitioner's Notice of Desire to Contest the Tariff Classification Determination of Certain Steel Tube Fittings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of petitioner's notice of desire to contest classification determination.

SUMMARY: This document provides notice that a domestic interested party has filed a timely notice of its desire to contest a U.S. Customs and Border Protection decision regarding the classification of certain imported steel tube fittings.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff

Classification and Marking Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection at (202) 325-0092.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document concerns the tariff classification of certain steel tube fittings by U.S. Customs and Border Protection (CBP) and the desire of a domestic interested party to contest CBP's classification decision.

Classification of Steel Tube Fittings

Merchandise imported into the customs territory of the United States is classified under the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification of merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes. *See* Section 1204 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418 (August 23, 1988); 19 U.S.C. 3004(c).

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided such headings or notes do not otherwise require, then according to the other GRIs. *See* GRI 1, HTSUS (2017).

GRI 6 prescribes that, for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, according to GRIs 1 to 5, on the understanding that only subheadings at the same level are comparable. *See* GRI 6, HTSUS (2017).

The Explanatory Notes to the Harmonized Commodity Description and Coding System ("Harmonized System") represent the official interpretation of the World Customs Organization (established in 1952 as the "Customs Cooperation Council") on the scope of

each heading. *See* H.R. Conf. Rep. No. 100-576, 100th Cong., 2d Sess. 549 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1582; Treasury Decision (T.D.) 89-80, 54 FR 35127, 35128 (August 23, 1989). Although not binding on the contracting parties to the Harmonized System Convention or considered to be dispositive in the interpretation of the Harmonized System, it is CBP's position that the Explanatory Notes should be consulted on the proper scope of the Harmonized System. T.D. 89-80, 54 FR at 35128.

In New York ruling letter (NY) E83408, dated July 8, 1999, a steel tube fitting from Taiwan is described as "...a cold forged nonalloy steel male threaded connector body having a center hex nut, one flare tube end and one male pipe end. These tube fittings connect a piece of rigid tubing to a valve, manifold or another piece of rigid tubing in a hydraulic system." The U.S. Customs Service (U.S. Customs and Border Protection's predecessor agency) classified the steel tube fitting in subheading 7307.99.50, HTSUS (1999), which provides for "Tube or pipe fittings (for example couplings, elbows, sleeves), of iron or steel: Other: Other: Other." In 1999, the column one, general rate of duty for subheading 7307.99.50, HTSUS, was 4.3 percent *ad valorem*.

Filing of Domestic Interested Party Petition

On October 29, 2014, counsel filed a petition on behalf of Brennan Industries, Inc. ("Petitioner"), under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that CBP reclassify the articles under consideration (and as described in NY E83408) in subheading 8412.90.90, HTSUS (2014), which provides for "Other engines and motors, and parts thereof: Parts: Other." The column one, general rate of duty for subheading 8412.90.90, HTSUS, in 1999, 2014 and today is free.

On February 9, 2016, CBP published a Notice of Receipt of a Domestic Interested Party Petition in the **Federal Register** (81 FR 6880). The notice invited written comments on the petition from interested parties. The comment period closed on April 11, 2016. One comment was timely received in response to this notice, which was submitted by the Petitioner. The comment reiterated the Petitioner's position that the merchandise is classified in subheading 8412.90.90, HTSUS, as other parts of other engines and motors.

Decision on Petition and Notice of Petitioner's Desire to Contest

In HQ ruling letter H259349, dated October 5, 2016 (a copy of this ruling can be found online at <https://www.regulations.gov> under Docket No. USCBP-2016-0007), CBP denied the domestic party petition and affirmed the classification determination set forth in the previously issued ruling letter (*i.e.*, NY E83408). Consistent with the determination in NY E83408, CBP determined in H259349 that the articles at issue are parts of general use of heading 7307, HTSUS, as defined by Note 2 to Section XV. Accordingly, these parts are excluded from Section XVI of the HTSUS because, by operation of Note 1(g) to Section XVI, a good cannot be a part of general use of Section XV and also be *prima facie* classifiable as a part in Section XVI.

In HQ H259349, CBP also notified the Petitioner of its right to contest the decision by filing a notice with CBP indicating its desire to contest the decision, and that the notice must be filed not later than thirty days from the date of issuance of the ruling letter, pursuant to 19 U.S.C. 1516(c) and § 175.23, CBP Regulations (19 CFR 175.23).

By letter dated November 2, 2016, the Petitioner filed a timely notice under 19 U.S.C. 1516(c) and 19 CFR 175.23 of its desire to contest CBP's decision in HQ H259349 regarding

the classification of the steel tube fittings under consideration. The Petitioner has designated, under 19 USC 1516(c) and 19 CFR 175.23, eight (8) ports of entry where Petitioner believes that merchandise of the kind covered by the petition is being imported into the United States, and at which the Petitioner desires to protest. The ports of entry are as follows:

- Seattle, WA
- Tacoma, WA
- Long Beach, CA
- Los Angeles, CA
- New York, NY
- Savannah, GA
- Houston, TX
- Charleston, SC

Upon application by the Petitioner to any of the Port Directors of the ports listed above, the Port Director(s) shall make available to the Petitioner information on merchandise of the kind covered by the petition (as described in NY E83408) entered after the date of publication of this notice in order that the petitioner may determine whether the entry presented raises the issue involved in the petition. *See* 19 U.S.C. 1516(c); 19 CFR 175.25. By this notice, Port Directors at these ports are directed to notify the Petitioner by mail when the first of such entries is liquidated. *See* 19 U.S.C. 1516(c) and 19 CFR 175.25(b).

AUTHORITY:

This notice is published in accordance with 19 U.S.C. 1516(c) and §§ 175.23 and 175.24 of the CBP Regulations (19 CFR 175.23-24).

Dated: January 10, 2018.

Kevin K. McAleenan,
Acting Commissioner,
U.S. Customs and Border Protection.

[FR Doc. 2018-00577 Filed: 1/12/2018 8:45 am; Publication Date: 1/16/2018]